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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 63

K. W. LAUGHLIN,

Petitioner,

vs.

SCOTT M. LOFTIN AND JOHN W. MARTIN, AS TRUSTEES FOR THE FLORIDA EAST COAST RAILWAY COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a writ of certiorari issue to review a judgment of the Supreme Court of Florida, entered in the above-entitled cause on December 22, 1952.

Jurisdiction

The Circuit Court of Dade County, Florida, entered final judgment for the respondents on January 8, 1952 (R. 15). On December 22, 1952, this judgment was affirmed by the Supreme Court of Florida, Justice Terrell and Chief Justice Sebring dissenting. 62 So. 2d 745. Petition for a rehearing was denied by the Supreme Court of Florida on February 9, 1953. 62 So. 2d 745. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(3).

Question Presented

Is a locomotive, its boiler, tender, and all parts and appurtenances "in proper condition and safe to operate" within the meaning of the Federal Safety Appliance Act, 45 U. S. C. Sec. 23, when:

1. The waterglass on the boiler gives false readings because of a leak in one of its steam pipe connections.

2. The automatic water pump, although turned on, fails to pump water into the boiler.

Statutory Provisions Involved

45 U. S. C. Sec. 23 provides in pertinent part:

> "It shall be unlawful for any carrier to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof, are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such carrier without unnecessary peril to life or limb, . . . "

45 U. S. C. Sec. 53 provides in pertinent part:

> "In all actions hereafter brought against any such common carrier . . . the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided,* That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

Rule 37 of the Interstate Commerce Commission provides in pertinent part: "Every boiler shall be equipped with at least one water glass . . ."

Statement

Petitioner, a railroad engineer, was seriously injured when the boiler, of the steam locomotive he was operating in interstate commerce for respondent railroad, exploded near Lake Worth, Florida, on April 4, 1951 (R. 42, 71, 166). Petitioner sued respondents on August 14, 1951, alleging violations of the applicable federal statutes enacted for the protection of railroad employees (R. 1-5). Relevant facts and circumstances concerning the explosion are these:

Locomotive boilers are so constructed that an explosion will result if the water level falls too low while the crownsheet is being heated. Since the consequences of the boiler explosion are so disastrous, steam locomotives are equipped with numerous safety devices to guard against these terrible occurrences. Under normal operating conditions, the locomotive's automatic water pump will keep a steady stream of water flowing from the water tank to the boiler, thus making it impossible for the crownsheet to become overheated.

Human frailties and the complexities of modern machinery being what they are, it is imperative that steam locomotives have devices to determine whether the water pump is actually pumping water into the boiler and how much water is actually in the boiler at all times. The boiler's water glass, required by Rule 37 of Interstate Commerce Commission, performs both these functions. The height of the water in the water glass column shows how much water is in the boiler, and when the automatic water pump is working properly, the water level in the glass can be seen to rise as water enters the boiler (R. 287, 292, 387-388).

The explosion which injured Petitioner Laughlin occurred because there was insufficient water in the boiler to

adequately cover the crownsheet (R. 217, 221, 250, 326, 369, and Defendants' Exhibit A-3 consisting of a piece of scorched crownsheet). The water glass on this exploding boiler had a leaky steam pipe connection at the top of the glass (R. 107; Plaintiff's Exhibit 16 consisting of Engineer Laughlin's routine report made prior to the explosion which stated, "Top water glass connection in very bad condition"; and Plaintiff's Exhibit 1 consisting of the leaky pipe itself). Since the leak was at the top connection, this caused the water glass to give false readings in that the water level in the glass was higher than the water level in the boiler (R. 59, 73-74, 150, 214).

Why the water pump on this locomotive failed to work properly is unknown. The water tank was filled at West Palm Beach, Florida, shortly before the explosion (R. 90, 93, 96-97, 110, 177, 194). In addition, the water pump was turned on during the entire time the train was traveling from West Palm Beach to the point of the explosion (R. 92, 99, 112, 175, 179-181), and was still turned on when respondents' employees investigated the wreckage. All that is known is that the pump did not work properly since the explosion was caused by lack of water in the boiler.

After all the evidence had been presented at the trial, respondents moved for a directed verdict on the grounds that no federal law had been violated and that the sole proximate cause of the accident was petitioner's own gross negligence (R. 412). The motion was denied (R. 412). Petitioner then moved for a directed verdict as to the issue of liability on the ground that 45 U. S. C. Sec. 23 was violated as a matter of law (R. 412-413). This motion was also denied (R. 413). The trial judge then proceeded to charge the jury that it should find for respondents, if it found that

the evidence did not disclose a violation of 45 U. S. C. Sec. 23, *and* that the negligence of Petitioner Laughlin was the sole proximate cause of the accident (R. 434). Thereafter, the jury returned a verdict for the respondents (R. 438).

Petitioner appealed to the Supreme Court of Florida contending that as a matter of law the defective water glass and the defective water pump were violations of 45 U. S. C. Sec. 23. On December 22, 1952, the Supreme Court of Florida rendered a *per curiam* affirmance of the judgment of the trial court. 62 So. 2d 745. Justice Terrell, with whom the then Chief Justice Sebring concurred, dissented, stating, "We are confronted with a Federal act that has been repeatedly construed by the Federal Courts. I think their interpretation of the act, when read with the evidence, compels a reversal with directions to grant a new trial on the question of damages based on the injuries proven." 62 So. 2d at 747.

Reasons for Granting the Writ

1. The Supreme Court of Florida has decided an important question of Federal law in a way probably not in accord with the applicable decisions of this Court. *Urie* v. *Thompson,* 337 U. S. 163; *Lilly* v. *Grand Trunk R. Co.,* 317 U. S. 485; *Southern Ry. Co.* v. *Lunsford,* 297 U. S. 398.

2. The decision below is in conflict with the decision of the Court of Appeals of Kentucky in *Louisville & N. R. Co.* v. *Stephens,* 298 Ky. 328, 182 S. W. 2d 477.

3. The decision below, if permitted to stand, will establish an erroneous precedent for the Supreme Court of Florida and for all other courts which do not, or refuse to, understand that violations of the Federal Safety Appliance Acts "dispense, for the purposes of employees' suits, with the necessity of proving that violations of safety statutes constitute negligence; and making proof of such violations

is effective to show negligence as a matter of law." *Urie* v. *Thompson*, 337 U. S. 163, 189.

4. The decision below is wrong and deprives petitioner of rights granted him by a Federal statute.

Conclusion

For the foregoing reasons, it is respectfully submitted that:

1. This petition for a writ of certiorari should be granted.
2. The judgment of the Supreme Court of Florida should be reversed with directions to grant petitioner a new trial limited to the issue of damages only.

Respectfully submitted.

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IN THE

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SCOTT M. LOFTIN and JOHN W. MARTIN, as Trustees for the Florida East Coast Railway Company, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

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